

Counterterrorism: altering international norms in the twenty-first century

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JOHN HARDY, AUG 26 2008

In the twenty-first century, counterterrorism has affected global norms and institutions in several distinct but similar ways. In order to underscore the main effects of terrorism and counterterrorism on global norms and institutions, this piece will consider three key cases. Firstly, American unipolarity, the Bush Doctrine and the inability of the UN to constrain the coalition of the willing are all indicative of an erosion of the power of the United Nations Security Council (UNSC) as a global institution that defends a variety of norms in international relations. This has occurred as a direct result of policies with counterterrorism objectives. Secondly, the principles of just-war and international law, *jus in Bello* and *jus ad bellum* particularly, have been weakened by the armed forces of the 'coalition of the willing' in the prosecution of the American led war on terror, detracting from a global norm that protects non-combatants from mistreatment. Finally, a broad spectrum of civil and human rights have been diminished by enhanced security measures designed to harden targets against possible terrorist attacks. These include attempts to extract intelligence from terror suspects and detainees through illegal methods, covert monitoring of civilian communications and the limiting of public assembly and protests through the threat of police violence. The cases outlined in this piece point towards an increasing trend to reorient the international security sphere towards the issue of terrorism despite the impact on longstanding norms and structures.

It is commonly argued that American unilateralism in the twenty-first century has diminished the authority of the UNSC.[i] The United Nations was intended to be a multilateral forum which could function as the arbiter for collective security by attempting to mediate disputes between states before they escalated into confrontation and conflict.[ii] However, in the aftermath of the 9/11 terrorist attacks in New York, the Bush administration announced a new ontology that espoused unilateral policies intended to preserve the security of the US from perceived threats regardless of the complaints or acceptance of other nations.[iii] This new 'Bush Doctrine' explicitly emphasised a willingness to engage in pre-emptive strikes and military intervention in other states, the implications of which troubled prominent members of the North Atlantic Treaty Organisation (NATO).[iv] Iraq would become the first flashpoint for controversy surrounding the UNSC's inability to constrain the US in its aggression toward another sovereign state. When the UNSC refused to pass a US-sponsored resolution authorising a war against Iraq for its non-compliance with resolution 1441—even though the weapons inspections that it mandated had not been completed and those that had been conducted had proven to be fruitless—American diplomats revoked the resolution and continued on to instigate the Iraq war, criticising the UN as ineffective.[v] This negatively affected the Westphalian norm of non-interference in another sovereign state and undermined the institutional authority of the UN.[vi]

American unilateralism saw the circumvention of the UN and a subsequent delegitimation of the norms of the international legal framework.[vii] The crux of US unilateralism in the erosion of global norms is the concurrent capacity of American policymakers to transcend international law and to enforce it across the world as it suits their policy agenda. Further delegitimation has been caused in equal measures by terrorist organisations and counterterrorist operations conducted by the military forces of allied nations. The reason that international laws of war are becoming tangents to the twenty-first century theatre of operations is that neither all terrorist activities nor all anti-terrorist campaigns are necessarily predicated upon the principle of armed conflict between states, the tenet of international laws of war.[viii] In reality, many terrorist organisations are not concerned with international norms,

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further undermining the legitimacy of claims that international law is an effective tool in shaping the international security environment.

Given their low expectations of reciprocity, counterterrorist forces may not apply legally binding rules of engagement to terrorists. Similarly, the norm that military aggression ought to be directed only toward combatants may be eroded for the reason that terrorists can be difficult to distinguish from non-combatants and because terrorists often target civilians specifically, potentially provoking a low threshold of tolerance by counterterrorist forces for the due care that ought to be exercised during operations.[ix] Consequently, the two pinions of laws of armed conflict, *jus ad bellum* and *jus in Bello*, have become the locus of acute controversy following the media coverage of the wars in Afghanistan and Iraq, the detention facilities of Guantanamo Bay and Abu Ghraib and the actions of allied intelligence services – specifically the US Central Intelligence Agency (CIA) and its affiliates.[x]

Heightened international attention on potential breaches of law by counterterrorist forces followed the tightening of security measures under the banner of homeland security. The third global norm and institution to be affected by terrorism and counterterrorism was the international human rights system. Compounded by later attacks committed by terrorist organisations, the fear inspired in citizens by their own states became a highly contested issue as the US unveiled its USA PATRIOT act,[xi] the UK followed with its counterterrorism bill and Australia released the ASIO amendment (terrorism) act 2002 and the Anti-terrorism Act (No.2) 2004[xii] along with a host of other amendments to existing legislation.[xiii] Rather than diminishing the fear of future attacks, these legislative responses to initial attacks aggravated the sense of fear amongst target communities, particularly in the language that was used by leading politicians in press releases associated with these legislative changes.

Civil rights once taken for granted in liberal societies, especially the norms of non-discrimination and guilt by association have been weakened.[xiv] Further erosion of civil liberties and human rights emerges from the expansion of the American 'Ker-Frisbie Rule' that allows for so-called 'extraordinary renditions' to be used to forcibly remove suspects or fugitives from any part of the world and presented to a US court to be prosecuted. In the Global War on Terror, the practice of extraordinary rendition no longer necessarily entails being brought before the US justice system.[xv] Other human rights norms that have been circumvented by various governments include information privacy norms, with western allies justifying the covert interception of electronic communications (for example the Echelon network),[xvi] the use of satellite imagery to spy on citizens, and special laws enhancing police powers at public gatherings and protests, especially at international events such as the G-20 and APEC summits.[xvii]

In recent years terrorism has evolved into a mass-casualty and mass-media oriented weapon that seeks to destabilise global norms and institutions. Similarly, allied responses to terrorism have infringed upon key global norms and institutions in an attempt to repress terrorist organisations. American unipolarity and the Bush Doctrine expose the inability of the UN to contain the world's only superpower. Military incursions in two Middle Eastern theatres by the 'coalition of the willing' have for all intents and purposes deligitimised and undermined the efficacy and validity of the international laws of armed conflict. Simultaneously, enhanced security measures implemented by various governments, especially the Western governments that are often the most vocal proponents of international laws, have breached many international norms relating to civil liberties and human rights—norms that they attempt to promote to the rest of the world—in an attempt to protect themselves from an abstract and mistakenly monolithic terrorist enemy. These assaults on international multilateralism, the international legal institution and the global human rights systems have all been generated or precipitated by terrorism and counterterrorism in the twenty-first century. These cases highlight instances of terrorism and counterterrorism that have affected global norms and institutions. In so doing, they lend credence to the argument that there is a trend emerging in the international security agenda that seeks to alter existing structures, norms and institution to favour the objectives of powerful actors in the contemporary security environment.

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- [iii] Kegley, C and Wittkopf, E. *World Politics: Trends and Transformations*, Belmont: Thompson Wadsworth , 2006; p.83
- [iv] Bell, R. *Extreme Allies: Australia and the USA* in Cotton, J. and Ravenhill, J (eds.) *Trading On Alliance Security: Australia in World Affairs 2001-2005*, Oxford: Oxford University Press, 2007; p.32
- [v] Firth, S. *Australia in International Politics: An Introduction to Australian Foreign Policy*, Sydney: Allen and Unwin, 2005; pp. 217-9
- [vi] Bell, C. *The international system and changing strategic norms* in R. Ayson and D. Ball (eds.) *Strategy and Security in the Asia-Pacific*, Crows Nest, NSW: Allen and Unwin, 2006; pp.30-3
- [vii] Kegley, C and Wittkopf, E. *World Politics: Trends and Transformations*, Belmont: Thompson Wadsworth , 2006; pp. 537-49
- [viii] Roberts, A. 'Counter-terrorism, armed force and the laws of war', *Survival*, 44(1), 2002; pp. 9-15
- [ix] Ibid.
- [x] Bell, C. *The international system and changing strategic norms* in R. Ayson and D. Ball (eds.) *Strategy and Security in the Asia-Pacific*, Crows Nest, NSW: Allen and Unwin, 2006; pp.26-9
- [xi] Martin, G. *Understanding Terrorism: Challenges, Perspectives and Issues*, Thousand Oaks, CA: Sage, 2006; p.514
- [xii] Von Doussa, J. 'Conflict and Countering Terrorism: Civil and Political Rights and the Rule of Law', *Seventh International Conference for National Human Rights Institutions*, Seoul, Korea, 14 - 17 September 2004, http://www.hreoc.gov.au/about/media/speeches/speeches_president/2004/koreaterrorismworkshop.html
- [xiii] Parliament Library of Australia, *Terrorism Law*, <http://www.aph.gov.au/library/intguide/law/terrorism.htm>
- [xiv] Fitzpatrick, J. 'Speaking law to power: the war against terrorism and human rights', *European Journal of International Law*, 14(2), 2003; p.255
- [xv] Martin, G. *Understanding Terrorism: Challenges, Perspectives and Issues*, Thousand Oaks, CA: Sage, 2006; p.475
- [xvi] Echelon is a surveillance network maintained by the US NSA in conjunction with intelligence services of Australia, Canada, the UK and New Zealand that filters through publicly transmitted electronic communications. See Martin, G. *Understanding Terrorism: Challenges, Perspectives and Issues*, Thousand Oaks, CA: Sage, 2006; p.550
- [xvii] Parliament of New South Wales, *APEC Meeting (Police Powers) Bill 2007*, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20070626011>

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